

GOLF COURSE OPERATION AGREEMENT

THIS GOLF COURSE OPERATION AGREEMENT (the "Agreement") is by and between THE CITY OF SEATTLE (the "City"), a municipal corporation of the State of Washington, acting by and through its Department of Parks and Recreation (the "Department") and the Superintendent thereof, and MUNICIPAL GOLF OF SEATTLE ("MGS"), a Washington not-for-profit corporation.

RECITALS

A. Pursuant to Article XI, § 1 of the Seattle Charter, the Superintendent has the responsibility for the operation and control of the Parks and Recreation system of the City.

B. The Department owns and operates three (3) municipal golf courses, as follows: Jackson Park, Jefferson Park and West Seattle (collectively, the "Golf Courses").

C. Pursuant to City Council Resolution 28955, the City determined that it is in the best interests of the City and the general public for a non-profit corporation to operate the Golf Courses.

D. Council Resolution 28955 also authorized the Superintendent to negotiate an agreement with the not-for-profit corporation to be created to operate the Golf Courses.

E. MGS was formed as a not-for-profit corporation, and is dedicated exclusively, for the purpose of managing and operating municipal golf courses.

F. The mission of MGS is to offer the best possible playing conditions at the lowest possible price on the Golf Courses, through the following:

1. A management philosophy that emphasizes sound business principals, common sense and accountability to the golfing public;

2. A commitment to reinvest any annual operating surpluses into the Golf Courses, golf programs, and an agreed upon return to the City;

3. A recognition that course enhancements, improved customer service and a working atmosphere where employees are valued and respected are the shared values of MGS;

4. A commitment to diversity in the areas of staff, programs, participants and community; and
5. A sensitivity to the ecology and the environment of the Golf Courses.

AGREEMENTS

NOW, THEREFORE, in consideration of the mutual promises made herein, the parties hereto hereby agree as follows:

ARTICLE I

DEFINITIONS

The following words and terms shall have the following meanings for the purposes of this Agreement. Terms otherwise not defined herein shall be given their usual and customary meaning.

"Agreement" means this Golf Course Operation Agreement, including all schedules and exhibits attached hereto and any amendments hereto, between the City and MGS.

"Board of Directors" means the Board of Directors of MGS as elected in accordance with MGS's Articles of Incorporation and Bylaws.

"City" means the City of Seattle.

"Commencement Date" means July 1, 1995.

"Department" means the Department of Parks and Recreation of the City.

"Effective Date" shall have the meaning set forth at Article XXV below.

"Golf Course Facilities" means those structures and facilities that are part of the Golf Course Properties, but exclusive of the real property that comprises the Golf Courses.

"Golf Course Properties" shall have the meaning set forth in Article II below.

"Golf Courses" means the Jackson Park, Jefferson Park and West Seattle golf courses.

"Interim Maintenance Agreement" shall mean that certain Interim Maintenance Agreement dated as of _____, 1995, and expiring as of December 31, 1995, by and between the City and MGS set forth at Exhibit I-A hereto and incorporated herein by this reference.

"Maintenance Agreement" shall mean, as applicable, the Interim Maintenance Agreement or, upon expiration or earlier termination thereof and the execution of a Maintenance Agreement pursuant to Section VII(B), such Maintenance Agreement.

"Master Plan" means the Renovation Master Plan adopted pursuant to Resolution 28376, as now or hereafter revised by the City.

"MGS" means Municipal Golf of Seattle, a Washington not-for-profit corporation.

"Minimum Capital Improvement Amount" shall mean the annual minimum dollar amount of required capital improvement commitments or expenditures by MGS, as further defined at Section IV(B).

"SMC" means the Seattle Municipal Code.

"Superintendent" means the Superintendent of the Department.

"Term" shall have the meaning set forth in Article III below.

"Transferred Property" means those certain equipment, tools, machinery, supplies and other personal property set forth at Exhibit I-B attached hereto, which is incorporated herein by this reference, that the City shall transfer to MGS pursuant to Section VII(C).

ARTICLE II

GRANT OF RIGHTS TO MGS

The City hereby grants to MGS for the Term, and upon the terms and conditions hereof, the exclusive right and privilege to operate the following (collectively, the "Golf Course Properties"):

1. The real property and improvements that comprise the Jackson Park, Jefferson Park and West Seattle golf courses, as further identified in the maps attached hereto as Exhibit II-A-1, which is incorporated herein by this reference; and

2. The Transferred Property means the property identified in Exhibit I-B.

ARTICLE III

TERM

A. Term. The rights granted to MGS under this Agreement shall be in effect for ten and one-half (10½) years (the "Term"), unless terminated earlier pursuant to the provisions hereof. The initial Term may be extended on the same terms and conditions for periods of five (5) years each at the option of the City. For all purposes herein, the anniversary date of this Agreement shall be January 1, and the Term shall expire on December 31, 2007.

B. Effective and Commencement Dates. While this Agreement shall become effective as of the Effective Date and MGS shall be authorized on the Effective Date to enter into agreements with third parties with respect to the Golf Course Properties, MGS's exclusive right to operate the Golf Course Properties shall begin on the Commencement Date.

ARTICLE IV

FINANCIAL OBLIGATIONS OF MGS

A. Reimbursements for Maintenance. Pursuant to the Maintenance Agreement, MGS shall reimburse the City for all maintenance services that the City provides to MGS thereunder.

B. Return to the City. Beginning in 1998, MGS shall remit to the City a percentage, as set forth in the table below, of the gross revenues from greens and driving range fees (net of related sales and admissions taxes), such remitted funds to be used exclusively for youth programs of the Department; provided, however, that said remittance shall be due and payable only if MGS has a sufficient net surplus from operations, as determined in accordance with MGS's financial reporting obligations under Section V(F), for the applicable year to fund its operations; operating and capital reserves; and meet minimum capital improvement commitments or expenditures (the "Minimum Capital Improvement Amount"), as set forth in the following table:

<u>Year</u>	<u>Fee Percentage</u>	<u>Minimum Capital Improvement Amount</u>
1998	6%	\$500,000
1999	8%	\$650,000
2000 and thereafter	10%	\$750,000

Any return payable to the City under this section shall be remitted as soon after its financial records for the year for which such return has accrued are closed, but no later than April 1 of the subsequent calendar year. MGS shall not operate the Golf Courses in a manner specifically designed to reduce or eliminate the City's return under this Agreement.

C. Reinvestment. Any surpluses generated net of operating costs; reserves; the Minimum Capital Improvement Amount; and the contingent return to the City under Section IV(B), shall be timely reinvested by MGS in further Golf Course capital improvements and golf programs consistent with its general obligations under Section V(A).

D. Taxes. MGS, unless contested in good faith, shall pay, before delinquency, all taxes, levies, penalties and assessments of any nature and kind whatsoever, that at any time hereafter may be levied, assessed or otherwise imposed on the Golf Course Properties or the operation thereof, or that are or become payable during the term of this Agreement, including, without limitation, taxes arising out of the business conducted at or from the Golf Course Properties, taxes levied on any property or equipment at or in any of the Golf Course Properties, and taxes on any interest in this Agreement or any leasehold interest deemed to have been created thereby under RCW 82.29A. In the event the State of Washington makes any demand upon the City for payment of leasehold excise taxes resulting from MGS's operation of any of the Golf Course Properties pursuant to this Agreement or withholds funds due to the City to enforce collection of leasehold excise taxes, MGS, at its sole expense, may contest such action and shall indemnify and defend the City for all sums expended by, or withheld by the State from the City, in connection with such taxation.

E. Utilities.

1. On July 1, 1995, the City shall transfer all utility accounts associated with the Golf Course Properties to MGS. MGS shall pay, before delinquency, all charges incurred for or in connection with the providing of telephone service, electricity, gas, oil, water, sewer and garbage collection to or for any of the Golf Course Properties, unless such charges are contested in good faith. The City will pay to MGS the share of any such utility bills related to activities of non-Golf Course Properties.

2. By July 1, 1995, the City shall make its best efforts to install the necessary meters to facilitate direct billing of utilities for the Golf Course Facilities and the Golf Courses. Prior to installation of the meters, the City shall develop, and present to MGS for its review and approval, a separate metering plan for each of the Golf Courses and Golf Course Facilities.

3. The City shall pay for the necessary construction to provide a comparable water source to the Jackson Park Golf Course in the event that the City gives away the right to water from Thornton Creek for use at Jackson Park.

ARTICLE V

OBLIGATIONS OF MGS

A. General Obligations. MGS shall offer the best possible playing conditions at the lowest possible price on the Golf Courses, through the following:

1. A management philosophy that emphasizes sound business principles, common sense and accountability to the golfing public;
2. Reinvestment of annual operating surpluses into the Golf Courses and golf programs;
3. Course enhancements, improved customer service and a working atmosphere where employees are valued and respected;
4. Diversity in the areas of staff, programs, participants and community; and
5. Sensitivity to the ecology and the environment of the Golf Courses.

B. Programs for the General Public. MGS shall establish and maintain programs that benefit the general public and, in particular, the youth, as follows:

1. MGS shall establish programs equal or better in quality and/or greater in number to that provided as of July 1, 1994 by the prior Golf concessionaire to teach and make the game of golf available to the general public, and shall advance the opportunities of children and teenagers to learn and play the game of golf.

2. MGS, on reasonable terms and conditions, shall provide access to the Golf Courses and Golf Course Facilities for charitable events.

3. MGS shall develop interest in competitive golf for all golfers, both men and women, of all levels of skill, at the junior, adult and senior levels, through team and individual tournaments and competitions.

C. Operation and Maintenance of the Golf Course Facilities.

1. Subject to the terms and conditions of this Agreement, as the exclusive operator of the Golf Course Properties, MGS shall adopt and put into place the policies, procedures, rules and regulations with respect to the Golf Course Properties for matters directly related to golf except as otherwise provided herein or in the Maintenance Agreement. All other policies, procedures, rules and regulations related to the Golf Course Properties shall be subject to the City's prior approval.

2. Subject to the City's obligations under the Maintenance Agreement, MGS shall maintain, repair and service the Golf Course Facilities and the Transferred Property so as to keep the same functional and in good operating condition, normal wear and tear excepted. Subject only to the indemnification provided in Section XI(F), MGS shall be responsible for all loss, which includes, without limitation, damage, theft or destruction, with respect to the Golf Course Facilities and the Transferred Property.

D. Personnel.

1. Subject to this Section D and other relevant terms and conditions hereof, MGS, at its sole and exclusive discretion, shall develop and implement policies and procedures with respect to the hiring, retention and compensation of the employees of MGS.

2. The Board of Directors, in its sole discretion, shall appoint an Chief Executive Officer and such other staff as it deems appropriate to undertake the day-to-day operations of the Golf Courses. The Chief Executive Officer, as deemed appropriate with the approval of the Board of Directors, shall employ such additional personnel as deemed necessary or convenient to operate the Golf Courses, including, without limitation, the head golf professionals of each of the Golf Courses, any assistant golf professionals, and any other employees and corporate personnel, and delegate such duties to the personnel. In general, MGS staff shall represent the ethnic diversity of the City.

E. Fee Structure. MGS shall orient the fees for play on the Golf Courses to provide the best possible playing conditions at the lowest possible price. MGS shall develop a fee for play structure based on its operating and capital budget and the results of its operations. Under such fee structure, the maximum fee MGS may charge per 18-hole round of golf at any of the Golf Courses shall be subject to City approval, but MGS, in its sole discretion, may establish lower fees, discounts, or promotional programs. In the event that MGS desires an increase in the maximum fee for an 18-hole round of golf, MGS shall submit such proposed changes to the Department by July 1, for consideration by the City as part of the budget process.

F. Financial Reporting.

1. MGS shall maintain, and shall ensure that its contractors maintain, books, records, documents and other evidence of accounting procedures and practices that sufficiently and properly reflect, under generally accepted accounting principles, the financial condition and results of operation of the Golf Course Properties. Such records shall be subject at all reasonable times to inspection, review, audit and copying in King County by personnel duly authorized by the City, the Office of the State Auditor and other officials so authorized by law, rule, regulation or contract.

2. MGS shall retain, and shall ensure that its concessionaires retain, all books, records, documents and other material relevant to this Agreement for not less than six (6) years.

3. MGS, and, if any of its contractors conducts business operations at more than one of the Golf Courses, its contractors, shall maintain a separate set of accounts that reflect the financial condition and results of operations with respect to the operations of each of the Golf Courses.

4. MGS, on a monthly basis, shall submit revenue reports to the Department on the revenues received for greens and driving range fees. MGS, on a quarterly basis, shall submit revenue reports to the Department of all other revenues received from golfing activities. MGS, on an annual basis, shall retain an independent certified public accountant to review the financial statements of MGS and to render an opinion as to whether, in all material respects, such financial statements, taken as a whole, comply with generally accepted accounting principles. Within one hundred eighty (180) days from the end of its fiscal year, MGS shall deliver to the Superintendent a copy of the reviewed financial statements and a report of independent certified public accountants with respect thereto.

G. Reserves. MGS shall maintain a reasonable reserve for operating expenses. Such operating reserve shall not exceed total operating expenses (not counting the expense of funding the reserve) for the three (3) months with the highest operating expenses within the months of March through September inclusive of the prior year.

H. Capital Improvements.

1. Minimum Levels. Beginning in 1998, MGS shall commit the Minimum Capital Improvement Amount annually for capital improvements; provided, however, that in the event that insufficient funds are available to meet the Minimum Capital Improvement Amount, the City shall waive such portion of its return from greens and driving range fees under Section IV(B) as is necessary to make up the shortfall. MGS shall not allow uncommitted capital improvement funds to accumulate in excess of Five Hundred Thousand Dollars (\$500,000).

2. Budgeted CIP and Retained Golf Subaccount. Subject to any applicable State of Washington or City public works requirements, MGS shall be responsible for

completing projects utilizing, in aggregate, all such funds as are currently budgeted in the City's CIP 1995-98 budget related to major maintenance projects for the Golf Course Properties in a manner consistent with the CIP and Council Resolution adopting such CIP budget. MGS also shall be responsible for completing projects utilizing, in aggregate, all such funds as are retained in the Golf Subaccount reserved under Section VII(D) in a manner consistent with the Council Resolution establishing such Subaccount. The Department shall promptly reimburse MGS for its expenditures in undertaking such projects, up to a total reimbursement of funds currently budgeted in the City CIP 1995-98 budget and retained in the Golf Subaccount, respectively.

3. Implementation of Capital Improvements. After July 1, 1995, MGS shall be responsible for undertaking or otherwise implementing any major maintenance, Master Plan or other capital improvement projects. As soon as practicable after the Effective Date, but in no event later than December 1, 1995, MGS shall submit its proposed interim capital improvement plan for the 1995-1997 period, which shall include proposed expenditures of the City's CIP 1995-1998 budget pursuant to subsection V(G)(2). Annually, beginning for 1997, MGS shall submit no later than July 1, its proposed capital improvement program for the next five (5) years to the Department for its approval. Any proposed changes to the Master Plan shall be subject to City Council approval.

4. Design Review. MGS shall submit to the Department for its review and approval the plans and specifications for any capital improvement project. For projects with a cost of less than or equal to Fifty Thousand Dollars (\$50,000), the Department shall complete its review and provide written comments to MGS within fifteen (15) days of its receipt of such plans and specifications, and for projects with a cost of greater than Fifty Thousand Dollars (\$50,000), the Department shall complete its review and provide written comments to MGS within thirty (30) days of its receipt of such plans and specifications. Projects are deemed approved by the Department as submitted if, within the time periods set forth herein, it has not provided written comments to MGS.

5. Withheld Greentrees Fees. Any funds that the City, in its sole discretion, shall withhold from Greentrees (net of a reasonable holdback for dispute resolution, if necessary) for nonperformance of the operating contract between the City and Greentrees shall be transferred to MGS for major facility maintenance.

6. Consultation with MGS on Capital Improvements. The City shall consult with MGS for any City-proposed capital improvement located on any of the Golf Course Properties, whether or not such improvement is related to the function or operation of the Golf Course Properties; provided, however, that such City-proposed capital improvement shall not be inconsistent with the golfing activities of the relevant Golf Course or interfere with MGS's ability to operate such Golf Course.

7. Ownership of Capital Improvements. Upon the expiration of this Agreement or its earlier termination pursuant to this Agreement, whichever is sooner, ownership of all capital improvements to the Golf Course Properties shall pass to the City.

I. Community Involvement. MGS shall reserve for public comment a portion of each regularly scheduled meeting of the full Board of Directors where formal action may be taken, which shall be held no less than four (4) times a year, and will provide reasonable notice of the same by reasonable means. MGS also shall develop and implement appropriate vehicles or mechanisms for routine consultation with its golfer constituency and the local communities near the Golf Courses. MGS further shall solicit from recognized and reasonably representative community groups the appointment of three (3) community liaisons, one (1) from each of the communities near each Golf Course, and MGS and the Department jointly shall agree upon each community liaison from the list of available candidates. Community liaisons shall serve one- (1-) year terms, but may be jointly reappointed by MGS and the Department to serve up to three (3) consecutive terms. Each community liaison shall have the right to attend any portion of any regularly scheduled full Board meeting where formal action may be taken regarding Golf Course operations that may be relevant to such liaison's community. Subject to reasonable notice to MGS, a Department representative may meet with the Board of Directors.

J. Annual Review by Superintendent. Annually, as soon as is practicable after MGS has submitted to the City MGS's financial statements and the related report of independent public accountant pursuant to subsection V(F)(4), the Board of Directors shall schedule a meeting with the Superintendent to review MGS's operations for the previous year and to discuss any issues that are relevant to the current year's operations.

ARTICLE VI

OBLIGATIONS PERFORMABLE BY CONCESSIONAIRES

MGS may select and retain one (1) or more concessionaires or subcontractors to fulfill any or all of its obligations under this Agreement. Notwithstanding the foregoing, MGS shall remain ultimately responsible for the proper performance of all such obligations. All concessionaires shall be selected through a competitive selection process acceptable to the Superintendent.

ARTICLE VII

OBLIGATIONS OF THE CITY

A. Maintenance. Pursuant to the Maintenance Agreement and consistent with the standards provided therein, the City shall maintain the golf courses.

B. Maintenance Agreement. By no later than November 1, 1995, the City and MGS shall enter into a Maintenance Agreement that provides for the maintenance of the Golf Courses, and includes, without limitation, performance standards, baseline duties, means for direction and communication between MGS and the City and pricing for maintenance services. Within two (2) years of the Effective Date, pursuant to City Council Resolution 28955, the City and MGS shall review and evaluate for effectiveness, including, without limitation, golfer satisfaction, the maintenance of the Golf Courses under this Agreement.

C. Transfer of City Equipment and Personal Property. The City hereby transfers to MGS all its right, title and interest in the equipment and personal property in or associated with the Golf Course Facilities. MGS shall utilize such equipment and personal property exclusively for purposes related to and consistent with MGS operation of the Golf Course Properties and to

maintain repair and replace such equipment and property as necessary and appropriate, as determined by MGS.

D. Reservation of Subaccount. The City hereby reserves for MGS for projects undertaken under subsection V(H)(2) the unallocated and unencumbered balance as of July 1, 1995, of the Golf Subaccount created by SMC 18.28.100. MGS shall utilize Subaccount funds exclusively for the purposes set forth in SMC 18.28.100.

E. Expeditious Review. The Department shall expeditiously complete any reviews vested in the Superintendent under this Agreement. Any Department approvals required under this Agreement, except such approvals specifically required under subsection V(H)(4), shall be deemed granted within sixty (60) days after submittal to the Department by MGS of an adequately documented request for approval unless the Department has denied such request in writing or requested a specific amount of additional time for its review in writing prior to sixty (60) days after MGS's request was submitted.

ARTICLE VIII

EVALUATION

During the first six (6) months of 1998, MGS and the Department shall jointly evaluate MGS operation of the Golf Courses under this Agreement to determine whether the arrangement is working efficiently and in the best interest of the golfing public, among other factors. This overall evaluation, together with the evaluation of Golf Course maintenance under Section VII(B), may form the basis for negotiated modifications to this Agreement or recommendations to the City Council for legislation to improve the arrangement, if necessary and appropriate.

ARTICLE IX

OPTIONS FOR ADDITIONAL EXCLUSIVE OPERATION OPPORTUNITIES

At the request of MGS, subject to City Council approval, the City may transfer to MGS, upon such terms and conditions as MGS and the City may subsequently agree, the exclusive right and privilege to operate the following:

A. Interbay Golf Course and Driving Range. The City may assign to MGS any agreement it reaches with a private developer of such facility.

B. Green Lake Pitch and Putt.

ARTICLE X

COMPLIANCE WITH LAW

A. General Requirements. MGS, at no cost to the City, shall perform and comply with all applicable, current and future laws of the United States, the State of Washington, the Charter and Municipal Code of the City of Seattle, and rules, regulations, orders and directives of their administrative agencies and the officers thereof. Whenever MGS is informed of any violation of any such law, ordinance, rule, regulation, license, permit or authorization committed by it or any of its officers, employees, contractors, subconcessionaires, agents or invitees, MGS shall immediately desist from and/or prevent or correct such violation.

B. Licenses and Other Authorizations. MGS, at no cost to the City, shall secure and maintain in full force and effect during the Term, all required licenses, permits and similar legal authorizations, and comply with all requirements thereof.

C. Equality of Treatment. MGS shall conduct its business in a manner that assures fair, equal and nondiscriminatory treatment at all times in all respects to all persons without regard to race, color, religion, sex, age or national origin. Any failure to comply with this provision shall be a material breach of this Agreement.

D. Nondiscrimination and Affirmative Action. MGS shall comply with all State and local laws and ordinances prohibiting discrimination with regard to race, color, national origin, ancestry, creed, religion, political ideology, sex, sexual orientation, marital status or the presence of any sensory, mental or physical handicap. Consistent with that obligation, in the event that

MGS has three (3) or more employees during the term of this Agreement, the following provisions of SMC 20.44.040 shall be deemed to be incorporated herein:

During the performance of this Agreement, MGS agrees as follows:

MGS will not discriminate against any employee or applicant for employment because of creed, religion, race, color, sex, marital status, sexual orientation, political ideology, ancestry, national origin or the presence of any sensory, mental or physical handicap, unless based upon a bona fide occupational qualification. MGS will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their creed, religion, race, color, sex or the presence of any sensory, mental or physical handicap. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. MGS agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the City setting forth the provisions of this nondiscrimination clause. MGS will take affirmative action to ensure that all of its employees, agents and subcontractors adhere to this provision; provided, that nothing herein shall prevent an employer from giving preference in employment to members of his/her immediate family.

MGS will, upon the request of the Director of the City's Human Rights Department or the Director's designee (hereinafter the "Director"), furnish to the Director on such form as may be provided therefor, a report of the affirmative action taken by MGS in implementing the terms of this provision, and will permit access to MGS records of employment, employment advertisements, application forms, other pertinent data and records requested by the Director for the purpose of investigation to determine compliance with these provisions.

If, upon investigation, the Director determines that there is probable cause to believe that MGS has failed to comply with any of the terms of these provisions, MGS shall be so notified in writing. The Superintendent shall give MGS an opportunity to be heard, after ten (10) days' written notice. If the Superintendent concurs in the findings of the Director, the Superintendent may suspend or terminate this Agreement and evict MGS in accordance with law.

Failure to comply with any of the terms of these provisions shall be a material breach of this Agreement.

The foregoing provision will be inserted in all subagreements entered into under this Agreement.

E. Women And Minority Business Enterprise Utilization.

1. General. For purposes only of compliance with the requirements of SMC 20.46A, MGS shall be considered a contract awarding authority and shall comply with the requirements of SMC 20.46A in its contracting activities. As used in this Agreement, the term "WMBE" shall refer to Women's Business Enterprises ("WBEs"), Minority Business Enterprises ("MBEs"), Combination Business Enterprises ("CBEs"), and Minority Women's Business Enterprises ("MWBEs"), collectively.

During the term of this Agreement, MGS shall:

- a. Require that its subcontractors, consultants, suppliers and other third parties meet any established minority business enterprise ("MBE") and women's business enterprise ("WBE") set-asides;
- b. Make affirmative efforts to utilize WMBEs in performing the Agreement, through subcontractors, consultants, suppliers, or any other third parties;
- c. Require that subcontractors, consultants, suppliers and other third parties make affirmative efforts to utilize WMBEs in their performance;
- d. Maintain records reasonably necessary for monitoring compliance with the provisions of SMC Ch. 20.46A, and submit such information as may be requested by the Director of the City's Department of Administrative Services ("DAS") in order to monitor and enforce compliance; and
- e. Require that subcontractors, consultants, suppliers and other third parties maintain records reasonably necessary for monitoring their compliance with the provisions of SMC Ch. 20.46A, and that they submit such information as may be requested by the City's DAS Director in order to monitor and enforce compliance.

MGS shall comply with the requirements set forth in SMC Ch. 20.46A, SHRR Chapter 120, and this Agreement regarding subcontractor, consultant, supplier and other third

party utilization of WMBEs. Failure to meet the WBE and MBE utilization requirements will be considered a material breach of contract. The DAS Director and the Director of the City's Office of Management & Planning will monitor compliance with the WMBE requirements throughout the term of the Agreement. MGS shall submit such reports and information as the DAS Director deems necessary to determine compliance.

2. Certified WMBEs. Businesses used to meet the WMBE requirements must be certified by the Washington State Office of Minority and Women Business Enterprises ("OMWBE") and have done business or sought to do business with or within the City of Seattle. Utilization of a decertified WMBE will not count towards meeting the WBE and MBE utilization requirements. If MGS learns that a WMBE performing or scheduled to perform work on the Agreement has been decertified, MGS shall immediately notify the DAS Director. If the MGS is utilizing a firm that becomes decertified, the MGS shall make all reasonable efforts to obtain additional WMBE participation in order to meet the set-aside requirements established for the Agreement.

3. WMBE Reporting Requirements. Within thirty (30) days after completion of the WMBEs' performance, MGS shall require all WMBE subcontractors, consultants, suppliers and other third parties and any second-tier subs of all WMBE subcontractors, consultants, suppliers and other third parties, whether or not the second-tier subs are WMBEs, to submit Declaration of Payment Received Reports to DAS stating the work actually performed on the Agreement and a record of the total dollar amount received by type of work. These reporting forms are available from DAS. Additional documents may be requested as deemed necessary by DAS to determine compliance with the WMBE utilization requirements.

DAS may recommend that the City not accept MGS's performance as complete if the verified reports are not received. Additionally, DAS may consider the nonreceipt of verified reports as evidence that the WMBE set-aside requirements were not met and require that liquidated damages be withheld in the amount of the unverified payments. When WMBE subcontractors, consultants, suppliers and other third parties and any of their second-tier subs are

employed on more than one project with MGS, the records kept by MGS shall delineate the work performed and total dollar amount received for each separate project.

4. Sanctions For Noncompliance. Failure to comply with SMC 20.46A may result in the imposition of sanctions against MGS, its subcontractors, consultants, suppliers and other third parties, including but not limited to:

- a. Withholding of funds;
- b. Imposition of a civil fine or penalty;
- c. Termination based upon a material breach of the WMBE provisions; and
- d. Disqualification of a Bidder, a consultant, or any other business from eligibility for providing goods and services to the City for a period not to exceed five (5) years.

Additionally, MGS's subcontractors, consultants, suppliers and other third parties may be subject to liquidated damages for failing to meet the set-aside requirements of this Agreement.

5. Liquidated Damages. This Agreement hereby incorporates by reference SMC Ch. 20.46A (the "Women's and Minority Business Utilization Ordinance"). MGS will incorporate in agreements with its subcontractors, consultants, suppliers and other third parties provisions that the failure of MGS's subcontractors, consultants, suppliers and other third parties to comply with any of the requirements of SMC Ch. 20.46A shall be a material breach of their contract with MGS. The purpose of Seattle's WMBE Program is to provide a prompt remedy for the effects of past discrimination. The City in general, its WMBE Program in particular, and MGS are damaged when a contract, or portion of a contract, to be performed by a WBE or MBE is not actually performed by a WBE or MBE in compliance with SMC Ch. 20.46A. Because the actual amount of such damage is not reasonably calculable, MGS will incorporate in agreements with its subcontractors, consultants, suppliers and other third parties, provisions stipulating that liquidated damages equal to the unmet dollar amount of any WBE or MBE set-aside will fairly compensate the City for resulting delays in carrying out the purpose of the Program, the costs of

meeting utilization targets through additional contracts, the administrative costs of investigation and enforcement, and other damages and costs caused by the violation.

6. No Third Party Rights. The parties agree that the provisions of this section are not intended to create any third party rights. Any actions taken by DAS with respect to this Agreement are for the purposes of enforcing and implementing the provisions of SMC Ch. 20.46A, and not for the purpose of benefiting any particular entity.

7. Failure to comply with these WMBE utilization requirements shall be a material breach of this Agreement.

F. Americans With Disabilities Act Compliance. MGS, at no cost to the City, shall comply within a reasonable period of time consistent with current City compliance plans with all requirements of the Americans With Disabilities Act, as now or hereafter amended, and all rules and regulations implementing the same.

ARTICLE XI

INSURANCE AND INDEMNIFICATION

A. Liability Insurance. MGS at no expense to the City, shall obtain and file with the City's Risk Manager, twenty (20) days prior to the commencement of this Agreement (and twenty (20) days prior to policy(ies) renewal), evidence of a policy or policies of insurance as enumerated below. Said policy(ies): (i) shall be subject to approval by the City's Risk Manager as to Company, Form and Coverage, and primary to all other insurance the City may secure; and (ii) must protect the City from any and all claims and risks in connection with any activity performed by MGS, or any of their respective officers, employees, agents, contractors or assigns, by virtue of this Agreement or any use and occupancy of the Premises authorized by this Agreement.

1. A policy of Commercial General Liability Insurance, written on an occurrence form, rather than a "Claims Made" form, including all the usual coverages known as:

- a. Premises/Operations Liability
- b. Products/Completed Operations

- c. Personal/Advertising Injury
- d. Contractual Liability
- e. Owners and Contractors Protective Liability
- f. Stop Gap or Employers Contingent Liability
- g. Liquor Liability (if applicable)
- h. Employees as Additional Insured

Such policy(ies) shall provide the following minimum limit:

- (1) Bodily Injury and Property Damage:
 - (a) \$2,000,000 per occurrence
 - (b) \$5,000,000 annual aggregate

A deductible or self-insured retention of no more than Two Thousand Five Hundred Dollars (\$2,500) for property damage only is acceptable.

2. A policy of Commercial Automobile Liability, including coverage for owned, non-owned, leased or hired vehicles. Such policy(ies) shall provide the following minimum limit:

- a. Bodily Injury and Property Damage:
 - (1) \$1,000,000 per accident

Said insurance policy(ies) and subsequent renewals must be maintained in full force and effect, at no expense to the City, throughout the entire term of this Agreement.

Such insurance shall be endorsed to include the City of Seattle, its officers, elected officials, employees, agents and volunteers as an Additional Insured.

The following documents must be provided as evidence of insurance coverage:

A copy of the policy's declarations pages, showing the policy effective dates, limits of liability and the Schedule of Forms and Endorsement.

A copy of the endorsement naming the City of Seattle as an Additional Insured, showing the policy number and signed by an authorized representative, on Form CG2026 (ISO) or comparable.

A copy of the "Endorsements Form" to the policy which shows endorsements issued on the policy, and which include any company-specific or manuscript endorsements.

"The coverages provided by this policy to the City or any other named insured shall not be terminated, reduced or otherwise materially changed without providing at least forty-five (45) days' prior written notice to the City of Seattle."

A "Separation of Insureds" or "severability of interests" clause indicating essentially that "except with respect to the limits of insurance, and any rights or duties specifically assigned to the first named insured, this insurance applies as if each named insured were the only named insured, and separately to each insured against whom claim is made or suit is brought."

Be subject to approval by the City Risk Manager as to Company, Form and Coverage. The insurance carrier shall be: Rated A-:VII or higher in the A.M. Best's Key Rating Guide, Licensed to do business in the State of Washington, or be Filed in the State of Washington as surplus lines by a Washington Surplus Lines Broker.

MGS shall provide for the prompt and efficient handling of all claims for bodily injury, property damage or theft arising out of the activities of MGS under this Agreement. MGS shall ensure that all such claims, whether processed by MGS or MGS's insurers, either directly or by means of an agent, will be handled by a person with a permanent office in the Seattle area.

B. Property Insurance.

1. Maintenance of Insurance. MGS at its sole cost and expense, shall keep the buildings and all other improvements (which value shall be determined by MGS annually and identified in a notice to the Superintendent provided no later than March 1, of each year) on the premises insured throughout the term of the Agreement against the following hazards:

a. All Risk Property Coverage (not including earthquake damage), including Real and Personal Property, Business Interruption and Extra Expense, in an amount sufficient to permit such insurance to be written at all times on a replacement cost basis, or in the

case of Business Interruption, sufficient coverage to ensure that MGS can pay all of its fixed costs during any interruption of MGS's business.

b. Loss or damage from leakage or sprinkler systems now or hereafter installed in any building on the premises.

c. Loss or damage by explosion of steam boilers, pressure vessels, oil or gasoline storage tanks or similar apparatus now or hereafter installed in a building or buildings on the premises.

The policy(ies) shall be in the name of the City and MGS, as their interest may appear, and a copy of said policy(ies) shall be delivered to the City before commencement of this Agreement.

2. Insured Losses--Insurance Proceeds. In the event of any loss, damage or casualty which is covered by one or more of the types of insurance described in subsections 1(a-c) above, the parties to this Agreement shall proceed cooperatively to settle the loss and collect the proceeds of such insurance, which proceeds shall be held in trust by MGS (including interest earned by MGS on such proceeds) for use in accordance with the terms of this Agreement. The parties recognize that such insurance proceeds shall be used for the purpose of repairing and restoring the buildings and improvements damaged by the casualty to their former condition and usability or replacement of the same with equivalent or more suitable improvements.

3. Insured Casualties--Reconstruction. Using insurance proceeds, set out in subsection 2 above, the parties shall proceed with reasonable diligence as soon as sufficient funds are available to prepare plans and specifications for, and thereafter carry out, all work necessary to: (i) repair and restore the building and/or improvements on the premises damaged by the casualty to their former condition; or (ii) replace said building and/or improvements with a new building and/or improvements on the premises of a quality and usefulness for the program described in the above Agreement, and plan at least equivalent to, or more suitable than, the building and/or improvements which were damaged.

4. Mutual Waiver of Subrogation Rights. MGS and the City hereby mutually release each other from all liabilities and claims and waive all rights of recovery against each other for and to the extent of their respective property insurance coverages for such liabilities and claims, including any extended coverage and endorsements thereto; provided, however, that this release and waiver shall be inapplicable if it would have the effect, but only to the extent that it would have the effect, of invalidating any insurance coverage of either party.

5. Remedies Upon Failure to Insure. The Superintendent shall notify MGS whenever the Superintendent has a reasonable belief that MGS have failed to secure or maintain insurance as required by this Agreement. At the option of the Superintendent, the City may procure the required insurance for and at the ultimate expense of MGS, from whatever source the Superintendent or the City's Risk Manager deems reasonable. In the event the insurance required of MGS is procured by the City, MGS shall also reimburse all costs incurred by the City to secure such insurance coverage as well as a service charge, the initial amount of which shall be Two Hundred Fifty Dollars (\$250.00), which reimbursement and service charge, at the discretion of the Superintendent, may be either credited against any compensation or expense reimbursement due to MGS or invoiced to MGS for payment to the City.

C. Fidelity and Crime Coverage (Bond). MGS, at no expense to the City, shall provide Fidelity and Crime coverage of the following minimum limit:

1. Blanket Fidelity Coverage: \$250,000

D. Fire, Extended Coverage, Vandalism, Malicious Mischief and Special Extended Insurance. Such insurance shall provide coverage equal to not less than ninety percent (90%) of the replacement value of the Golf Course Properties, including all improvements, additions and alterations thereto, which value shall be determined by MGS annually and identified in a notice to the Superintendent provided no later than March 1. Under such insurance, any loss payment shall be made payable to MGS but shall be held in trust for the rebuilding, repairing, replacing or restoring of the Golf Course Properties, including all improvements, additions and alterations thereto.

E. Business Interruption Insurance. Such insurance shall provide sufficient coverage to ensure that MGS can pay all of its fixed costs during any interruption of MGS's business because of fire or other cause.

F. Mutual Defense Obligations. With respect to any third-party claim against or potentially against both MGS and the City that results from or arises out of any of the Golf Course Properties or the operation thereof, MGS and the City agree coordinate their defense of such claims pursuant to this provision. The parties agree to work together in good faith, and cause their respective counsel to work together in good faith, to coordinate and implement a strategy with respect to the legal defense of any such action, including, without limitation, answers, counterclaims, motions, discovery, settlement, preparation for trial, dispute resolution and any other hearings, and appeal. The obligations hereunder in no way shall impair or restrict either party's rights with respect to the defense of such an action nor shall such obligations prohibit the taking of any action that is in a party's best interest, including, without limitation, seeking the dismissal or summary judgment of claims, negotiating or entering into a settlement or pursuing any form of alternative dispute resolution. Each party in all cases shall bear its own costs and related expenses with respect to any third-party claim hereunder, including, without limitation, attorneys' fees, settlements and judgments.

G. Mutual Release and Waiver. For and in consideration of the execution of this Agreement and the provision of insurance as contemplated herein, and to the extent a loss is covered by insurance in force, the City and MGS each releases and relieves the other, and waives its claim of recovery from the other for loss or damage to owned or rented property arising out of or incident to fire, lightning and the perils to the extent covered under any extended coverage insurance policy or endorsement approved for use in the State of Washington, whether such loss or damage is due to negligence of either party or any agent or employee of either or any other person, unless an insurance policy secured by either party hereto pursuant to this Agreement or otherwise would become void upon the making of such release and waiver.

H. Indemnification.

1. MGS agrees to indemnify, defend and hold harmless the City from and against any and all claims, suits, actions, proceedings, economic loss, liability, damage, cost, or expense of any kind (including reasonable attorneys' fees and expenses associated therewith or with successfully establishing the right to indemnification hereunder) ("Damages") resulting from or arising out of the Golf Course Properties or the operations thereof; provided, however, that, with the exception of Damages arising from the sole negligence of MGS, or fraudulent or ultra vires acts, MGS's obligation under this provision shall be limited to the proceeds realized from insurance maintained by MGS pursuant to this Article X.

2. Subject to MGS's indemnification obligation under subsection 1 above, the City agrees to indemnify and hold harmless MGS from and against any and all claims, suits, actions, proceedings, economic loss, liability, damage, cost, or expense of any kind (including reasonable attorneys' fees and expenses associated therewith or with successfully establishing the right to indemnification hereunder) ("Damages") resulting from or arising out of the Golf Course Properties or the operations thereof; provided, however, that the City's indemnification obligation hereunder does not extend to Damages arising out of the sole negligence of MGS, or fraudulent or ultra vires acts by MGS.

3. Each party promptly will notify the other of any claim, or the threat thereof.

ARTICLE XII

TERMINATION; SURRENDER OF PREMISES AND REMOVAL OF NON-CITY

PROPERTY

A. Notice of Breach and Default. Except for the breach specified in subsection XII(B)(1)(c) or subsection XII(C)(1), neither party shall be in default unless it fails to perform any obligation required of it within a reasonable time, which time shall not extend more than thirty (30) days after written notice by the non-defaulting party to the party in default specifying the particular obligation that such party has failed to perform; provided, however, that if the nature of such party's obligation reasonably requires more than thirty (30) days for

performance, then such party shall not be in default if it commences performance within such thirty- (30-) day period and thereafter diligently prosecutes the same to completion.

B. Termination by the City.

1. Each of the following acts and omissions constitutes a material breach and potential default for which the City shall be entitled to terminate MGS's rights and interests in and under this Agreement by giving MGS five (5) months' written notice:

a. The failure of MGS to keep the Golf Courses open for operation as required hereunder without the prior written permission of the Superintendent, except for closures necessitated by weather conditions or public safety considerations.

b. MGS's failure to pay the undisputed or adjudicated portion of any monies due to the City under this Agreement on or before the due date, notwithstanding the right of the City to interest on any such sums that become delinquent.

c. MGS's repeated failure to perform, or violation of, any single substantial condition, covenant or obligation of or under this Agreement on three (3) or more occasions in any twelve- (12-) month period.

2. When authorized by resolution of the City Council after a public hearing held with notice to MGS, the Department, as provided in such resolution, may terminate MGS's rights and interests in this Agreement upon a legislative determination by the City Council, in its sole discretion, that:

- a. MGS has failed to:
- (i) Operate the Golf Courses using sound business principles, common sense and accountability to the golfing public;
 - (ii) Reinvest its annual operating surpluses into the Golf Courses and golf programs;
 - (iii) Enhance and improve customer service and create a working atmosphere where employees are valued and respected;

(iv) Promote and achieve diversity in the area of staff, programs, participants and the community; and

(v) Maintain a sensitivity to the ecology and the environment of the Golf Courses; or

b. Continued operation of the Golf Courses by a not-for-profit corporation is no longer in the public interest generally and beneficial to the golfing public in particular.

3. Remedies Upon Material Breach and Default by MGS. In the event of a material breach and default of this Agreement by MGS and its termination by the City as provided herein, the City, in addition to all other remedies available to it under law and without any additional notice to MGS, may license others to operate the Golf Courses; provided, however, that notwithstanding such termination and reentry, MGS's liability for any monies already accrued and to be paid to the City hereunder shall not be extinguished and MGS shall pay to the City said monies within thirty (30) days after the submission of an invoice therefor to MGS from the City.

C. Termination by MGS. MGS shall be entitled to terminate this Agreement as follows:

1. By giving six (6) months' prior written notice to the City for the City's repeated failure to perform, or violation of, any single substantial condition, covenant or obligation of or under this Agreement on three (3) or more occasions in any twelve- (12-) month period;

2. In the event the parties have not entered into a Maintenance Agreement by November 1, 1995, pursuant to Section VII(B) but only, in such event, by giving five (5) months' prior written notice to the City; or

3. By giving one (1) year's prior written notice to the City of its sole determination to terminate for its convenience without cause.

D. Termination Plan. Prior to the effective date of any termination under this Agreement, MGS and the City will jointly develop a termination plan providing for, without limitation, assignment or termination of any outstanding agreements with subcontractors, concessionaires and other third parties; post-termination staffing; accounting close-out; financial settle-up; record storage; property inventory, including identification for retention by the City of property purchased with revenues directly from MGS operation of the Golf Courses under this Agreement and identification and removal only of property owned by MGS employees and MGS property not purchased with revenues directly derived from its operation of the Golf Courses under this Agreement.

ARTICLE XIII

ASSIGNMENT OF AGREEMENT

MGS shall not assign or transfer this Agreement, without the prior written approval of the City. Any such assignment shall be specifically subject to all the terms and provisions of this Agreement. In the event of any proposed assignment of the Agreement, MGS shall cause to be delivered to the City simultaneously with such proposed assignment, an instrument in writing, executed by the assignee, in which the assignee shall assume and agree to perform all of the terms and provisions of this Agreement.

ARTICLE XIV

ACTIONS CONTESTING THE AGREEMENT

Each party shall appear and defend any action or legal proceeding brought to determine or contest the validity of this Agreement. If both parties to this Agreement are not named as parties to the action, the party named shall give the other party prompt notice of the action and provide the other an opportunity to intervene. Each party shall bear any costs and expenses assessed by the court against it; any costs and expenses assessed by a court against both parties jointly shall be shared equally.

ARTICLE XV

NOTICE ADDRESSES

A notice, request, approval or communication under this Agreement by either party to the other shall be in writing and shall be sufficiently given or delivered if sent postage prepaid by United States first class mail or facsimile, and:

- A. MGS. In the case of a notice or communication to MGS, if the same is mailed to:

Chief Executive Officer
Municipal Golf of Seattle
1300 Dexter Avenue North, Suite 120
Seattle, Washington 98109-3547

or faxed to MGS at:
216-4141

With a copy to:

Preston Gates & Ellis
Attn: B. Gerald Johnson

at:

5000 Columbia Center
701 Fifth Avenue
Seattle, Washington 98104-7078

or faxed to:
623-7022

- B. The City. In the case of notices to, requests of, or approvals sought from the City, if the same is mailed to:

Superintendent
Seattle Department of Parks and Recreation
100 Dexter Avenue North
Seattle, Washington 98109

or faxed to the Superintendent at:
233-7023

With a copy to:

City Attorney
The City of Seattle

at:

1000 Municipal Building
600 Fourth Avenue
Seattle, Washington 98104

or faxed to:
684-8284

Either party may, from time to time, designate by written notice dispatched as provided in this section, one (1) or more alternative addresses for communication to such party. Either party may require, at any time, that additional copies of any notice be sent to such person(s), not (as to each notice, in excess of three (3) copies at any one time), as shall, from time to time, be designated in any notice from such party as to such requirement.

ARTICLE XVI

WAIVERS

No action other than a written document from a party specifically so stating shall constitute a waiver by that party of any particular breach or default by the other party, nor shall such a document waive the other party's failure to comply fully with any other term or condition of this Agreement, irrespective of any knowledge any officer or employee of the waiving party may have of such breach, default or noncompliance. A party's failure to insist upon full performance of any provision of this Agreement shall not be deemed to constitute consent to or acceptance of such incomplete performance in the future. No course of dealing between the parties or any delay in exercising any rights hereunder shall operate as a waiver of any rights of any party.

ARTICLE XVII

NO THIRD PARTY RIGHTS OR PARTNERSHIP CREATED

A. No Third Party Rights. Except as expressly provided herein, nothing in this Agreement shall be construed to permit anyone other than the parties hereto and their successors and assigns to rely upon the covenants and agreements herein contained nor to give any such third party a cause of action (as a third party beneficiary or otherwise) on account of any nonperformance hereunder.

B. No Partnership or Joint Venture. The City shall in no event be construed to be a partner, associate or joint venturer of MGS or its concessionaires as a consequence of this Agreement. MGS is not made an agent of the City for any purpose whatsoever by this Agreement. Neither MGS nor any of its concessionaires shall create any obligation or responsibility on behalf of the City or bind the City in any manner.

ARTICLE XVIII

GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. The venue of any suit or arbitration arising under this Agreement shall be in King County, Washington, and if a suit, in King County Superior Court.

ARTICLE XIX

DISPUTE RESOLUTION

A. Binding Arbitration. All disputes, claims, controversies, rights and obligations of every kind and nature between the parties to this Agreement arising out of, or in connection with, this Agreement or breach thereof, including but not limited to existence, construction, validity, rescission, interpretation, meaning, performance, nonperformance, enforcement, operation, breach, or termination thereof and the damages, compensation and/or restitution claimed therefrom shall be submitted to, and resolved by, final and binding arbitration pursuant to the procedures set forth in this Agreement.

B. No Suits or Proceedings. The parties stipulate and agree that (1) with respect to any dispute, claim, controversy, right or obligation that is made subject to arbitration under the terms of this Agreement, no suit, action or proceeding shall be instituted by either party, except to enforce this Agreement or the award or damage award of the arbitrators and (2) the provisions of this Agreement shall be a complete defense to any other suit, action, or proceeding instituted in any international, foreign, federal, state, or local court or other judicial body or before any administrative tribunal with respect to any controversy or dispute arising out of, or in connection with, this Agreement.

C. Construction and Jurisdiction. Notwithstanding the provisions of Section XIX(A), the arbitration provisions of this Agreement shall be construed in accordance with, and any arbitration and award under this Agreement shall be conducted, made and enforced pursuant to RCW 7.04, as the same may have been or may be amended from time to time. The King County Superior Court shall be the venue and have jurisdiction for any court supervision and enforcement of this Agreement and any arbitration and award under this Agreement. Each party hereby waives any right each may have to contest personal jurisdiction, or to assert the doctrine of forum non conveniens, or to object to venue with respect to any suit, action or other proceeding brought in accordance with this Agreement. Service in proceedings pursuant to this Section in the King County Superior Court may be made by prepaid airmail or by any other method permitted by applicable law and rules.

D. Initiation of Arbitration. Either party may initiate arbitration by sending written notice to the other.

E. Proposed Arbitrators. In the event an arbitration is initiated by either party, each party has fifteen (15) days from the date of receipt of written notice, to provide to the other party in writing, a list of six persons qualified to serve as arbitrators with no affiliation or relationship with either party that would tend to affect the person's ability to act as a neutral arbitrator, and acceptable to that party.

F. Selection of Arbitrators. The City and MGS shall mutually select three (3) arbitrators from the list within fifteen (15) days after the exchange of proposed arbitrators information. If the City and MGS are unable to agree upon these arbitrators within the time specified herein, then the arbitrators shall be appointed by the by the Presiding Judge of the King County Superior Court.

G. Instruction of Arbitrators. After the arbitrators have been selected, they shall take an oath to serve neutrally and impartially. The arbitrators shall then schedule such discovery or other exchange of documents and information as is appropriate to the issue and a date, time and place for hearing the presentations of the City and MGS. The hearing shall occur not less than one hundred (100) days after the appointment of the arbitrators except for good cause shown. The arbitrators shall make a written report to the City and MGS on their final determination within thirty (30) days after completion of the hearing. The determination of the arbitrators shall constitute a final arbitration determination.

H. Conduct of Arbitration. The arbitration shall be conducted in Seattle, Washington, in accordance with the then-existing rules of the American Arbitration Association but not under the auspices or control of the AAA. Judgment upon any award by the arbitrators may be entered by the state or federal court having jurisdiction.

I. Costs. The cost of the arbitration shall be divided equally between the City and MGS. Each party shall be responsible for its own costs.

ARTICLE XX

TABLE OF CONTENTS AND ARTICLE CAPTIONS

The Table of Contents is for convenience only and forms no part of this Agreement. The article captions used in this Agreement are for convenience only and shall not control or affect the meaning or construction of any of the provisions of this Agreement.

ARTICLE XXI

AMENDMENT

This Agreement may not be modified or amended except by written instrument approved by the Board of Directors and the Superintendent on the basis of authorization by ordinance.

ARTICLE XXII

COUNTERPARTS

This Agreement shall be executed in two (2) counterparts, and each such counterpart shall be deemed to be an original instrument. Both such counterparts together will constitute one and the same Agreement.

ARTICLE XXIII

SEVERABILITY

Each provision of this Agreement is severable from all other provisions. In the event any court of competent jurisdiction determines that any provision of this Agreement is invalid or unenforceable for any reason, all remaining provisions will remain in full force and effect.

ARTICLE XXIV

FORCE MAJEURE

A party shall not be responsible nor deemed to be in default on account of delay in the performance of any act to be performed under this Agreement due to the occurrence of, but not limited to, fires, floods, explosions, strikes, serious accidents, or any cause to the extent it is beyond a party's control and not occasioned by a party's fault. In the event that such a cause results in delay of a party's performance of any act to be performed under this Agreement, that party will promptly inform the other party and thereafter will use reasonable efforts to remedy such delay.

ARTICLE XXV

EFFECTIVE DATE

This Agreement shall become effective upon execution by the Mayor and an authorized officer of MGS.

ARTICLE XXVI

ENTIRE AGREEMENT

This Agreement contains the entire agreement and understanding of the parties with respect to the subject matter hereof, and supersedes all prior oral or written understandings, agreements, promises or other undertakings between the parties. The parties to this Agreement acknowledge that it is a negotiated agreement, that they have had the opportunity to have this

Agreement reviewed by their respective legal counsel, and that the terms and conditions of this Agreement are not to be construed against any party on the basis of such party's preparation of the same.

IN WITNESS WHEREOF, the City and MGS have executed this Agreement by having their authorized representatives affix their signatures in the spaces below.

THE CITY OF SEATTLE

By _____
Mayor

Pursuant to the authority of Ordinance _____

MUNICIPAL GOLF OF SEATTLE

By _____
Its _____

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

I certify that I know or have satisfactory evidence that Norman B. Rice is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Mayor of the CITY OF SEATTLE to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____

[Seal or Stamp]

Notary Public

[Printed Name]

My appointment expires _____

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it as the _____ of MUNICIPAL GOLF OF SEATTLE, a nonprofit organization to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____

[Seal or Stamp]

Notary Public

[Printed Name]

My appointment expires _____

EXHIBIT I-A

INTERIM MAINTENANCE AGREEMENT

THIS INTERIM MAINTENANCE AGREEMENT (the "Interim Maintenance Agreement") is by and between THE CITY OF SEATTLE (the "City"), a municipal corporation of the State of Washington, acting by and through its Department of Parks and Recreation (the "Department") and the Superintendent thereof, and MUNICIPAL GOLF OF SEATTLE ("MGS"), a Washington not-for-profit corporation.

RECITALS

A. The City and MGS, pursuant to the Golf Course Operation Agreement (the "Agreement") to which this Interim Maintenance Agreement is attached, have agreed that MGS shall operate certain Golf Courses owned by the City.

B. Under the Agreement, the Department shall provide maintenance of the Golf Courses for the second half of calendar year 1995 according to the standards and responsibilities set for in this Interim Maintenance Agreement.

C. The City and MGS intend to execute a long-term maintenance agreement (the "Maintenance Agreement"), pursuant to which the Department will provide maintenance of the Golf Courses after January 1, 1996.

AGREEMENT

I. DEFINITIONS.

The following terms shall have the following meanings whenever initially capitalized in this Interim Maintenance Agreement. Other initially capitalized terms shall have the meanings given them under the Agreement.

A. Basic Services. The "Basic Services" shall be those services described in Section V(A) below, and in Attachment A.

B. Associated Services. The "Associated Services" shall be those services described in Section V(B) below.

C. Services. The "Services" shall refer to the Basic Services and the Associated Services.

D. Chief Executive Officer. The "Chief Executive Officer" shall refer to the chief executive officer of MGS.

II. EXCLUSIVE RIGHT TO MAINTAIN.

For the term of this Interim Maintenance Agreement, the Department shall have the exclusive right and privilege to provide routine maintenance on a daily basis for the Golf Course Properties identified in the Agreement.

III. MAINTENANCE PROGRAM OBJECTIVES.

The parties hereby declare their mutual goal to improve the playing conditions of Seattle's golf courses to a level comparable with or better than the industry standard for higher quality daily-fee public golf courses in the State of Washington. Both parties agree to pursue the following overarching objectives for the Services:

A. Services that are regularly evaluated and which implement measures to improve productivity, efficiency, and cost effectiveness.

B. Services that recognize the importance of the golfing experience and provide opportunities for input and feedback from the golfing public.

C. Services that are carried out in an ecologically sound manner respectful of the natural and environmental resources associated with the golf courses.

D. Services that are carried with a high level of efficiency to achieve outcome based results.

E. Services and operations that are conducted in accord with MGS's sound business principles mission so as to maximize golf revenues consistent with other objectives of this Interim Maintenance Agreement and of the Agreement.

F. Services that are conducted on a partnership basis with MGS, providing adequate means for regular and open communication and a process to effectively and fairly resolve issues and disputes.

G. Services that recognize the unique characteristics and needs of each golf course and are tailored to accommodate those conditions.

H. Services that are scheduled and conducted in a manner that accommodates routine play as well as, to the maximum extent possible, special events, tournaments, and other requirements requested by MGS.

IV. WORKING RELATIONSHIP.

Operation by MGS and maintenance by the Department as defined in the Agreement and in this Interim Maintenance Agreement are intended to be performed in close cooperation with the other party. Each party is critical to customer service and the overall golf experience. Each party will endeavor to be open to advice, suggestions and constructive criticism from the other, and both parties will work together to analyze and improve productivity and efficiency in all

areas of golf course operations and maintenance. Both parties recognize that regular and open communication is critical to success in providing the public with excellent golf facilities and activities. The parties agree to resolve any disputes in a good faith manner.

V. CITY OBLIGATIONS.

A. Basic Services. The City shall provide Basic Services in accordance with the general standards and requirements specified in Attachment A to this Interim Maintenance Agreement. These standards describe the minimum levels of maintenance services necessary for the proper maintenance of the Golf Course turfgrass and grounds, while providing for acceptable course playing conditions. These Basic Services shall be provided for from budgeted resources currently allocated to the Department for Golf Course maintenance through December 31, 1995.

B. Associated Services. In addition to the Basic Services identified above, the Department shall provide for routine day-to-day repairs of Golf Course infrastructure, including but not necessarily be limited to irrigation systems, drainage systems, tee mats, cart paths, and service roads. The Department will also be responsible for the maintenance of such Golf Course major maintenance projects and capital improvements as MGS finances and constructs. The Department will develop maintenance operating plans and standards for major improvement projects.

C. Services Generally. In scheduling maintenance activities, the Department will use best efforts to minimize the use and extent of temporary greens and tees and to accommodate any special requirements or timing requested by MGS because of tournaments or other events. MGS will use its best efforts to provide the City with the maximum notice possible of any special requirements or timing requested by MGS because of tournaments or other events. The Department shall provide Services in a professional manner in accordance with accepted industry standards.

D. Budget. The Department, in consultation with MGS, shall prepare a revised maintenance budget for the period January 1, 1996 through December 31, 1996. Such budget shall be subject to approval and acceptance by MGS. The 1996 maintenance budget shall be developed to provide the Basic Services, and other maintenance enhancements as agreed to by the Department and MGS in the long-term Maintenance Agreement. The Department will highlight the potential for additional maintenance costs as a budget increment in its 1996 budget submittal. The parties shall agree to a desired 1996 budget by September 20, 1995, and the Department shall submit a detailed request for any incremental changes in its 1996 budget to the Mayor and City Council before October 1, 1995.

The long-term Maintenance Agreement, for the initial period of January 1996 through December 1997, shall establish the process and schedule for evaluating maintenance services and needs and coordinating the preparation and review of annual budgets for subsequent years.

E. Maintenance Equipment and Materials. The Department and MGS jointly shall prepare or arrange for the preparation of an assessment of the lease or purchase of golf course maintenance equipment and materials. The assessment shall evaluate procurement options with

the objective of achieving the most cost effective equipment and material acquisition possible, and shall specifically consider private purchase or lease directly by MGS, in lieu of the City purchase or lease process. The parties shall endeavor to complete the assessment no later than December 31, 1995, for implementation under the Maintenance Agreement in the 1996 budget year.

F. Training. The Department shall develop a comprehensive, long-term training program plan for all City personnel working on the Golf Courses. The training program will include all facets of the maintenance operation, including, but not limited to turfgrass management, irrigation/drainage maintenance, golf course operation practices, application and storage of chemicals, equipment maintenance and customer service. The Department will consult MGS in the preparation of the training plan, and will complete preparation of the plan by December 31, 1995.

VI. PAYMENTS.

A. Services. The Department shall bill MGS for Services provided under this Interim Maintenance Agreement on a monthly basis no later than the end of the month following the month in which maintenance services are provided. MGS shall remit payment to the Department for such billings within thirty (30) days of receipt, except for those services and costs that are in dispute. During the term of this Interim Maintenance Agreement, the Department's total billings shall not exceed the budget as set forth in Attachment B, subject to the addition of other costs as mutually agreed under Section VI(C).

B. Utilities. MGS will be billed directly for all utilities associated with operation and maintenance of the Golf Courses. MGS and the Department will work together to conserve use of utilities and to resolve any questions which may arise from unusual costs. The Department will use best efforts to notify MGS in advance of significant changes in utility uses and costs and will solicit MGS input regarding preventative or corrective actions.

C. Other Costs. During the term of this Interim Maintenance Agreement, there may be unanticipated services related to maintenance or requests for maintenance services by MGS that exceed the scope of budget in Attachment B. The parties shall negotiate the timing and extent of such reimbursable services on a case-by-case basis in a timely manner.

VII. THE PARTIES' RESPONSIBILITIES FOR AREAS TO BE MAINTAINED.

The areas to be maintained are the Golf Course Properties, as defined in Article II of the Agreement. MGS shall provide day-to-day maintenance and long-term major maintenance associated with the clubhouses and land within twenty-five (25) feet of the clubhouses (except putting greens which are to be maintained by the City) plus the parking lot at Jackson Park, the parking lot at West Seattle, and on-course permanent and temporary restrooms on all Golf Courses. The parties intend that they will share the responsibility for the maintenance of the West Seattle parking lot based on its relative use for MGS golfing-related activities and other non-golfing-related activities, including, but not limited to, events at the West Seattle Stadium. In the event that MGS maintains the West Seattle parking lot in excess of its agreed upon share,

MGS may credit against amounts owed to the City the reasonable cost associated with such maintenance. The Department shall provide day-to-day maintenance on a reimbursable basis for the remainder of the Golf Course Properties including facilities related to such maintenance. MGS will undertake any major maintenance capital projects for such areas and facilities.

VIII. PERSONNEL.

A. City Personnel. The Department shall be responsible for salaries, hiring, supervision, firing, discipline and promotion of City personnel working on the Golf Courses. MGS shall monitor performance and customer service levels associated with City personnel working on the Golf Courses. The Department shall seek to recruit and hire new employees who are skilled in Golf Course operation and maintenance and shall provide opportunities for an MGS representative to be involved in the interview and selection process in an advisory capacity. MGS shall advise the Golf Course Crew Chiefs, the Manager of Golf Maintenance, the Director of the Department's Citywide Division, or the Superintendent, as appropriate, concerning any problems associated with the City's Golf Course personnel or with the working relationship described in Section IV of this Interim Maintenance Agreement. To the extent not inconsistent with City personnel policy and labor agreements, the parties shall resolve any such problems as follows: within five (5) working days following the notification concerning such problems, appropriate representatives from the Department and MGS shall meet to discuss the problem and assess potential remedies; and within thirty (30) days following notification, the Department (within the limits of any required confidentiality) shall report back to MGS on how it has resolved or intends to resolve any such problems.

B. MGS Personnel. MGS shall be responsible for salaries, hiring, firing, discipline and promotion of MGS personnel working on the Golf Course. MGS shall seek to recruit and hire employees who are skilled in Golf Course operation. The City shall advise the Chief Executive Officer of MGS concerning any problems associated with MGS's Golf Course personnel or with their working relationship described in Section IV of this Interim Maintenance Agreement. To the extent not inconsistent with MGS personnel policy, the parties shall resolve any such problems in the same manner and within the same timeframes identified in Section VIII(A) concerning City personnel.

C. Joint Efforts. Both parties recognize that the working relationship between the Chief Executive Officer of MGS and the Department's Manager of Golf Maintenance is critical to the success of this agreement and, therefore, the Board of Directors of MGS and the Superintendent of the Department shall closely monitor the performance of their respective employees and correct any problems as soon as possible.

IX. COMMUNICATION.

The Chief Executive Officer and the Manager of Golf Maintenance shall meet at least on a weekly basis and more often if necessary. The MGS Head Professional at each Golf Course and the Golf Course Crew Chiefs of the Department shall also meet at least weekly. The Golf Course Crew Chiefs or their designee shall report to the pro shop each morning before the start of play to report playing conditions for that day so that MGS can post conditions (temporary

greens, tee mats, etc.) for customers. After consultation with the Golf Course Crew Chief, final decisions on day-to-day course set up shall be the prerogative of the MGS Head Professional. MGS shall accept responsibility for the consequences of such final decisions. The Chief Executive Officer may communicate with any Golf Course Crew Chief as needed concerning day-to-day activities or issues related to a particular course, recognizing that supervision of each Golf Course Crew Chief is the responsibility of the Manager of Golf Maintenance. Likewise, the Manager of Golf Maintenance and the Golf Course Crew Chiefs may communicate directly with MGS personnel. The Superintendent may deploy Department personnel normally assigned to Golf Course maintenance to other Department tasks or positions, but only after prior notification to MGS.

Both the Department and MGS shall share any customer compliments or complaints received concerning the other's services. In communications with the public, MGS and the City shall whenever possible endeavor to convey consistent messages about the Golf Courses and golf activities, based on prior consultation between the parties.

X. REPORTING AND AUDIT.

A. Reporting. The Department shall include in its monthly billing to MGS an itemized list of costs; including golf course personnel, supplies, equipment, overhead charges, repairs by other Department Divisions or contractors, and any special one time costs. Such itemizations shall also list specific reductions or set-offs for costs attributable to other Department activities or facilities, including without limitation MGS activities benefiting Department grounds or facilities other than the Golf Course Properties. The Department shall submit an annual maintenance expenditure report for 1995 to MGS by March 31, 1996. By the same date, MGS shall submit a written report to the Department evaluating maintenance services provided during the previous year and identifying any issues which need to be resolved. This evaluation may include comments on individual employees. MGS and the Department shall agree to the format of such reports in advance.

B. Audit. During the term of this Interim Maintenance Agreement, Department agrees to keep all usual and proper records and books of account and all usual and proper entries relating to the Services performed for MGS hereunder. MGS may cause a review to be made of the applicable records in order to verify invoices or other statements by Department, and prompt adjustment shall be made to compensate for any errors or omissions disclosed by such review. Any such review shall be conducted by an independent certified public accountant selected by MGS (other than on a contingent-fee basis) and shall be conducted during regular business hours at Department offices and in such a manner as not to interfere with Department's normal business activities. Any such review shall be paid for by MGS unless material discrepancies are disclosed. "Material" shall mean a discrepancy amounting to at least five percent (5%) of the amount that should have been reported. If material discrepancies are disclosed, Department agrees to pay MGS for the reasonable costs associated with the review.

XI. CONFLICT RESOLUTION.

In the event that a problem or conflict concerning Golf Course maintenance is not resolved through the procedures outlined under the above sections of this Interim Maintenance Agreement, the parties agree to attempt to resolve such problems or conflicts in good faith at one or more meetings, promptly called and convened, the timing of which is to be based on the nature and severity of the problem or conflict, between the Superintendent, or an appointed representative, the Manager of Golf Maintenance and, to the extent necessary and appropriate, legal counsel with MGS's President, or an MGS officer (other than the Chief Executive Officer) appointed by the President, the Chief Executive Officer and, to the extent necessary and appropriate, with legal counsel. Either party may request such a meeting at any time. The parties agree not to pursue any other means of dispute resolution until the aforementioned persons have met at least once and, unless the operation of one or more of the Golf Courses is significantly and adversely affected, thirty (30) days has passed from the date that the notifying party exercised its rights hereunder. Subject to the procedures above, any problems or conflicts concerning Golf Course maintenance or maintenance personnel which cannot be resolved through the provisions of this Interim Maintenance Agreement shall be resolved in accordance through the provisions for dispute resolution presented in Article XIX of the Agreement.

XII. TERM.

This Interim Maintenance Agreement shall be in effect from July 1, 1995 to December 31, 1995. No later than September 1, 1995 the Department and MGS shall evaluate golf course maintenance services and the working relationship between the parties and recommend modifications and additions to the terms herein for the creation of a long-term Maintenance Agreement to be effective for an initial period of January 1, 1996 to December 31, 1997. The parties shall negotiate and approve the long-term Maintenance Agreement no later than November 1, 1995. If the Maintenance Agreement is not approved by November 1, 1995, the parties shall continue to operate under the terms of this Interim Maintenance Agreement until March 31, 1996, and City and MGS may elect to terminate the Agreement effective March 31, 1996.

IN WITNESS WHEREOF, the City and MGS have executed this Interim Maintenance Agreement by having their authorized representatives affix their signatures in the spaces below. This Interim Maintenance Agreement shall be attached to the Agreement and incorporated therein, and shall be effective upon the signature of both parties' representatives.

THE CITY OF SEATTLE

By _____
Holly Miller, Superintendent
Department of Parks and Recreation

MUNICIPAL GOLF OF SEATTLE

By _____
Katherine K. Anderson, President
Board of Directors

ATTACHMENT A

GOLF COURSE MAINTENANCE STANDARDS

ATTACHMENT B
BUDGET FOR JULY-DECEMBER 1995

EXHIBIT I-B
TRANSFERRED PROPERTY

EXHIBIT II-A-1
MAPS OF THE GOLF COURSES

**GOLF COURSE OPERATION
AGREEMENT**

Between

The City of Seattle

and

Municipal Golf of Seattle

Approved: June __, 1995

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